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Supreme Court of the United States

October Term, 1960/63

No. ~~945~~ 5

JAMES A. FOX and ALBERT R. SAMPSON,
Petitioners,

vs.

STATE OF NORTH CAROLINA
Respondent.

BRIEF OF THE RESPONDENT, STATE OF NORTH CAROLINA, IN OPPOSITION TO PETITION FOR WRIT OF CERTIORARI

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Supreme Court of the United States

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No. 944

JAMES A. FOX and ALBERT R. SAMPSON,
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vs.

STATE OF NORTH CAROLINA
Respondent.

BRIEF OF THE RESPONDENT, STATE OF NORTH CAROLINA, IN OPPOSITION TO PETITION FOR WRIT OF CERTIORARI.

OPINION BELOW

The opinion of the Supreme Court of North Carolina, in this case, is reported as STATE v. FOX, 254 N. C. 97 (No. 1, Advance Sheets of the Supreme Court, issued March 9, 1961); 118 S. E. 2d 58. This opinion is also set forth in the Petitioners' Appendix at p. la and the opinion in this case is based upon the opinion of the Supreme Court of North Carolina in STATE v. AVENT, et als, 253 N. C. 580 (No. 6, Advance Sheets of the Supreme Court, issued February 15, 1961); 118 S. E. 2d 47. The opinion in the AVENT case is also set forth in the Petitioners' Appendix to their brief in this case beginning on p. 5a, the opinion having been

written by Mr. Justice Parker and not by "Mr. Justice Mallard." The Judgment of the Superior Court of Wake County, which is a court of general jurisdiction, is shown on p. 28 of the State Record (No. 442, 10th District, Fall Term 1960) certified to this Court by the Clerk of the Supreme Court of North Carolina. It is not officially reported in any legal publication.

JURISDICTION

The jurisdiction of this Court is invoked pursuant to 28 U. S. C. 1257 (3), the Petitioners alleging a violation of constitutional rights secured by the Fourteenth Amendment. The Respondent, State of North Carolina, denies that the Petitioners have shown a sufficient basis for this Court to exercise its jurisdiction.

QUESTIONS PRESENTED

The Respondent, State of North Carolina, will present its Brief in opposition to the Petitioners' application for Writ of Certiorari upon the assumption that the three questions stated by Petitioners on p. 2 of their Brief are the issues involved in the case.

CONSTITUTIONAL PROVISION AND STATUTE INVOLVED

The Petitioners rely upon Section 1 of the Fourteenth Amendment to the Constitution of the United States.

The Petitioners also attack Section 14-134 of the General Statutes of North Carolina, the pertinent part of which is as follows:

"G.S. 14-134. Trespass on land after being forbidden. If any person after being forbidden to do so, shall go or enter upon the lands of another, without a license therefor, he shall be guilty of a misdeameanor, and on conviction, shall

be fined not exceeding fifty dollars or imprisoned not more than thirty days."

RESPONDENT'S STATEMENT OF THE CASE

In this Brief the Respondent will refer to the State Record certified to this Court by the Clerk of the Supreme Court of North Carolina by the designation of SR.

On March 21, 1960, the Petitioners Fox and Sampson were students at Shaw University, Sampson being a resident of the State of Massachusetts and Fox being a resident of Washington, D. C. (SR - 80, 85) On this day the Petitioners were walking up and down in front of the McLellan Store picketing the store and carrying signs on which were printed statements, or slogans, relating to their desire to be served at the lunch counter in the store. These two Petitioners were students at Shaw University but they testified that there was a movement both at Shaw and Saint Augustine Colleges to picket and protest all stores which would not permit them to be served at the lunch counters located in the stores. (SR - 80, 85) After these Petitioners had engaged in picketing for a while the Petitioner Sampson called the Petitioner Fox' attention to the fact that the lunch counter in McLellan Store was unblocked. (SR - 81, 85) The management of the store had fenced off the cafe, or restaurant, portion with a fence located approximately two feet from the 43 stools at the lunch counter and at the entrance to the lunch counter had placed a sign 11 x 14 inches, saying: "Employees and Guests Only" and on the lefthand side of the gate to the cafe another sign 11 x 7 inches had been placed on which appeared: "No Trespassing." These signs were at the gate, or entrance, to the lunch counter portion of the store, and they faced away from the lunch counter towards the front of the store and the doors entering from Fayetteville Street. (SR - 50)

Pursuant to instructions and on the advice of leaders, the Petitioners, for the purpose of creating circumstances which would lead to this case which their counsel wished to use as a test case, first made some small purchases in

the general part of the store which they conceived would strengthen their legal position when they made their planned and intentional entrance into the fenced-off portion of the store which contained the lunch counter. (SR - 81, 85) After the purchases the Petitioners entered into the lunch counter portion where the Manager told them he did not have facilities to serve colored people and for them to leave. (SR - 51) They stated that they were not going to leave and that they wanted to get service, and they were again asked by the Manager to leave; they refused to do so and continued to sit at the lunch counter. (SR - 51) The Assistant Manager was asked to get a patrolman, which he did, and Patrolman Duke came into the store and was informed as to what was taking place. The Manager again, upon the advice of the patrolman, went to the Petitioners and asked them to leave; then the patrolman went to the Petitioners and informed them that he would give them one minute to leave the store and when that time was up he would have to arrest them. (SR - 51, 58) The Manager testified that he asked the Petitioners to leave five times and that he was told by them twice that they were not going to leave. (SR - 52) It is clear that the Petitioners knew that they were not wanted and would not be served at the store's lunch counter because they had been observed by the Manager a week prior to this occasion walking up and down in front of the store with picketing signs and passing out leaflets claiming discrimination. (SR - 52) They also had seen the signs at the entrance to the lunch counter and knew the purpose of the signs. (SR - 52, 53) The manager testified (SR - 53) that he could not operate the store normally and serve colored people at the lunch counter. The Manager testified (SR - 53) that he had had previous trouble with colored students from Shaw University coming in, sitting down, and taking possession of his lunch counter and that was the reason he placed the fence around the lunch counter with the signs. On the day that this occurrence took place there were 25 or 30 white people at the lunch counter (SR - 54) and the Manager thought that Sampson ordered a cup of coffee. (SR - 55) The Manager further testified that these Petitioners were interfering with his

business because he did not have the facilities to serve colored people. (SR - 55)

Officer Duke testified that when he came in he was informed of the situation and he asked the Petitioners to leave; that he told the Manager to ask them again to leave in his presence, which was done. (SR - 58) Officer Duke then told them they had one minute in which to leave and if they did not leave within that time he would arrest them for trespassing. Officer Duke then looked at his watch and when 45 seconds had elapsed he informed the Petitioners that they had 15 seconds left; when that time was up the Petitioners continued to occupy the lunch counter stools, and he arrested Petitioners and carried them to the Wake County Jail. On the way to the jail Sampson said that the arrest was what they wanted and Fox said he had been thinking about joining the Police Department when he finished college. (SR - 59) The Petitioners, therefore, had achieved their objective and had carried out their plans and instructions in that they intentionally and wilfully committed a trespass in order to be arrested and thereby create a test case for their counsel. They were given every opportunity to leave the lunch counter part of the store, they knew a policeman had been sent for, and after the policeman came they were again given every opportunity to leave without arrest.

ARGUMENT

I

THE STATE PROSECUTION DID NOT DEPRIVE PETITIONERS OF ANY RIGHTS PROTECTED BY THE FOURTEENTH AMENDMENT.

Petitioners in their Brief assert several propositions relating to race discriminations prohibited by the Fourteenth Amendment about which there is no contest and which do not come within the ambit of the issues to be resolved in this case. Some of these propositions, about which there is no controversy, are as follows:

(1) The Respondent admits that action by the judicial branch of a state government can be such a type of state action that offends against the prohibitory provisions of the Fourteenth Amendment (SHELLEY v. KRAEMER, 334 U. S. 1; BARROWS v. JACKSON, 346 U. S. 249; Race Relations Law Reporter, Vol. 1, No. 3, pp. 613, 622). We still think there is such a thing as valid state action by the judicial branch of a state government.

(2) The Respondent admits that the provisions of the Fourteenth Amendment extend to and reach the conduct of state police officers (MONROE v. PAPE, No. 39, Oct. Term, 1960, Feb. 20, 1961; SCREWS v. UNITED STATES, 325 U. S. 91). We deny that it extends to and reaches valid conduct of state police officers exercised under valid state authority.

(3) We admit that there can be unlawful state action by a police officer acting under "color of law" where a state has enacted a Civil Rights statute which prohibits the denial of accommodations or privileges to a person because of color in places of amusement or in restaurants. (VALLE v. STENGEL, CCA-3, 176 F. 2d 697, 701). We think the rule can be different where a state has no such statute.

(4) We admit that where a state grants a franchise to a public utility there cannot be discrimination in the use of facilities or services furnished the patrons because of color nor can the state enforce such discriminations by delegating the power to make rules or by criminal sanctions (BOMAN v. BIRMINGHAM TRANSIT CO., CCA-5, 280 F. 2d 531; BOWDER v. GAYLE, 142 F. Supp. 707, aff'd 352 U. S. 903; FLEMING v. SOUTH CAROLINA ELEC. & GAS CO., CCA-4, 224 F. 2d 752). We deny that this rule applies to business under private ownership.

(5) We admit that all citizens, white and colored, have the right to contract, acquire and own property, are entitled to security of person and property, and to inherit, purchase, lease, hold and convey real and personal property as set

forth in R.S. 1977, 42 USC 1981, and R.S. 1978, 42 USC 1982. We do not admit that any person, white or colored, can be constitutionally forced to sell any private property or product to another person, or that one person is forced to negotiate with another person in or about any property or business transaction.

(6) We admit that there is an abundance of legal authority to the effect that a state or a subdivision of a state which operates restaurants or other facilities, or operates playgrounds or parks, or facilities of this nature, cannot by the device of a lease to private persons or firms discriminate against colored persons who desire to use such facilities, and that "the proscriptions of the Fourteenth Amendment must be complied with by the lessee as certainly as though they were binding covenants written into the agreement itself." (BURTON v. WILMINGTON PARKING AUTHORITY, 29 U. S. Law Week 4317, No. 164, Oct. Term 1960, April 17, 1961; DERRINGTON v. PLUMMER, CCA-5, 240 F. 2d 922; CITY OF GREENSBORO v. SIMKINS, CCA-4, 246 F. 2d 425; DAWSON v. BALTIMORE, CCA-4, 220 F. 2d 386, aff'd 350 U. S. 877).

(7) We don't think the cases on discrimination in public schools have anything to do with this case, but we admit there can be no state action which supports racial discrimination in this field and as set forth in the cases of BROWN v. BOARD OF EDUCATION, 347 U. S. 483, BOLLING v. SHARPE, 347 U. S. 497, and COOPER v. AARON, 358 U. S. 1.

Our contentions and the concepts that we believe to be sound have been fully stated by Mr. Justice Parker in STATE v. AVENT et als., 253 N. C. 580 (N. C. Advance Sheets No. 6, issued Feb. 15, 1961), 118 S. E. 2d 47, Petitioners' Appendix p. 2a. The matter has been considered by the law review writers (47 Virginia Law Review—No. 1, Jan. 1961, p. 1; 46 Virginia Law Review - 1960 - p. 123; 15 U. of Miami Law Review - No. 2 - 123; Race Relations Law Reporter, Vol. 5, No. 3 - Fall 1960 - p. 935; 1960 Duke Law Journal 315).

We assert that private citizens or persons have the right to practice private discrimination for or against each other. This runs all through the fabric of society and life. Clubs, lodges and secret societies will accept some as members and reject others. The country club people do not associate with the people that live in slum areas and across the railroad track. The people of some races will have no dealings with people of other races. Discriminations are practiced inside the race group. The colored insurance men, doctors and bankers do not have social affairs that are open to the cotton and cornfield Negroes. We further assert that any colored citizen can refuse to transact business with a white person or to have him on his business premises and the rule applies in reverse. Up to the present time, in private business, no man has been compelled to sell his product, goods or services to another unless he desired to so do. The reasons or motives that prompt his choice of action are irrelevant. The same private rights in the use and enjoyment of property are available to all. The protection of these private rights is not an "indiscriminate imposition of inequalities". As said by Mr. Justice Holmes (TERMINAL TAXICAB CO. v. KUTZ, 241 U. S. 252, 256):

> "It is true that all business, and for the matter of that, every life in all its details, has a public aspect, some bearing on the welfare of the community in which it is passed. But however it may have been in earlier days as to the common callings, it is assumed in our time that an invitation to the public to buy does not necessarily entail an obligation to sell. It is assumed that an ordinary shopkeeper may refuse his wares arbitrarily to a customer whom he dislikes * * *."

This court carefully stated (SHELLEY v. KRAEMER, 334 U. S. 1):

> "That Amendment erects no shield against merely private conduct, however discriminatory or wrongful." (citing in the note: UNITED STATES v. HARRIS, 106 U. S. 629; UNITED STATES v. CRUIKSHANK, 92 U. S. 542.)

In BOYNTON v. VIRGINIA, 5 L. ed. 2d 206, _____ U. S. _____, this Court said:

> "We are not holding that every time a bus stops at a wholly independent roadside restaurant the Interstate Commerce Act requires that restaurant service be supplied in harmony with the provisions of that Act."

But if there existed another vital, and primary constitutional principle that required that restaurant service be supplied by the roadside restaurant to a colored man, then there would seem to be no reason why this Court should pass it by and not settle the question.

The State Statute here under consideration is an old statute and has been passed upon by the Supreme Court of North Carolina many times. It appears in the State code as G. S. 14 - 134 and we refer the Court to certain cases, as follows: STATE v. CLYBURN, 247 N. C. 455, 101 S. E. 2d 295; STATE v. COOKE et als., 246 N. C. 518, 98 S. E. 2d 885; STATE v. GOODSON, 235 N. C. 177, 69 S. E. 2d 242; ARMSTRONG v. ARMSTRONG, 230 N. C. 201, 52 S. E. 2d 362; LEE v. STEWART, 218 N. C. 287, 10 S. E. 2d 804; STATE v. BAKER, 231 N. C. 136, 56 S. E. 2d 424. See also cases cited in annotation to Sec. 14 - 134 in General Statutes of North Carolina, and the 1959 Supplement thereto. A related statute is G. S. 14 - 126 which is as follows:

> "No one shall make entry into any lands and tenements, or term for years, but in case where entry is given by law; and in such case, not with strong hand nor with multitude of people but only in a peaceable and easy manner; and if any man do the contrary, he shall be guilty of a misdemeanor."

This statute was borrowed from English law and in substance is 5 Richard II, c. 8, and in fact it would appear that this statute and the one under consideration are formulations of the common law.

The statute now attacked by Petitioners is a neutral sta-

tute and has no connection with the color of persons. We challenge the Petitioners to trace the reported decisions and show that in its judicial administration it has been applied to colored persons and not to white persons. It is available to the colored man if a white man will not leave his premises when requested to do so.

The implied invitation to the general public to come into a shop or store can lawfully be revoked. On this aspect of the case the Supreme Court of North Carolina (253 N. C. 580, 588) said:

> "In an Annotation in 9 A.L.R., p. 379, it is said: 'It seems to be well settled that, although the general public have an implied license to enter a retail store, the proprietor is at liberty to revoke this license at any time as to any individual, and to eject such individual from the store if he refuses to leave when requested to do so.' The Annotation cites cases from eight states supporting the statement. See to the same effect, BROOKSIDE-PRATT MIN. CO. v. BOOTH, 211 Ala. 288, 100 So. 240, 33 A.L.R. 417, and Annotations in 33 A.L.R. 421".

Leaving aside the question of void-for-vagueness, the interpretation of the highest appellate Court of a state should be accepted by the Federal Courts (AMERICAN FEDERATION OF LABOR v. WATSON, 327 U. S. 582; PHILLIPS v. UNITED STATES, 312 U. S. 246; HIGHLAND FARMS DAIRY v. AGNEW, 300 U. S. 608).

The Petitioners have not cited any case dealing with private discrimination which supports their position, and indeed they cannot do so. Up to the present time the Courts that have considered the matter support our position (STATE v. CLYBURN, 247 N. C. 455, 101 S. E. 2d 295; WILLIAMS v. HOWARD JOHNSON'S RESTAURANT, 268 F. 2d 845; SLACK v. ATLANTIC WHITE TOWER SYSTEM, INC., 181 F. Supp. 124, aff'd 284 F. 2d 746; see also cases cited in opinion of Supreme Court of North Carolina in this case, and in law review articles cited supra).

As we see the matter, up to the present time, wherever the prohibitions of the Fourteenth Amendment have been invoked there has been a clear, established right to be protected from state action or from any discrimination aided or assisted by state action. Up to the present time in this case the Petitioners are starting from a position where they have no clear, established right to be protected by constitutional guarantees. They are asking the Court to invent, create or conjure up the claimed right and then say it is entitled to the protection of the Fourteenth Amendment. If it shall be said that the State court cannot exert its power to protect the property rights of either race but will leave the parties to their own devices, or to the exercise of personal force, then the result will be something that neither the white or colored race really desires.

II

THE STATE STATUTE IS NOT UNCONSTITUTIONAL FOR UNCERTAINTY AND VAGUENESS.

The Petitioners' next attack on the statute comes under the so-called vold-for-vagueness doctrine. Here we enter into a field of constitutional law which it seems to us is measured entirely by subjective tests.

There is one thing sure however—the Petitioners were engaged in a previously organized campaign and there is strong reason to believe from the evidence that they had the advice of counsel. The Supreme Court of North Carolina has construed G. S. 14 - 134 many times to include the situation where a person enters upon lands or premises without protest and is later told by the owner or proprietor to leave the premises. The case of STATE v. CLYBURN, 247 N. C. 455, 101 S. E. 2d 295, was decided on January 10, 1958, and Petitioners and their counsel had ample warning of this construction of the statute. We have heretofore cited above many cases in which the Supreme Court of North Carolina has construed the statute. This Court has said in substance that impossible standards of definition are not required and

that it is sufficient if the language "conveys sufficiently definite warning as to the proscribed conduct when measured by common understanding and practices." On this point, see ROTH v. UNITED STATES, 354 U. S. 476, and see annotation in 1 L. ed 2nd, p. 1511.

This State statute is certainly no more vague or uncertain than 18 USCA 242, which reads as follows:

> "Whoever, under color of any law, statute, ordinance, regulation, or custom, willfully subjects, or causes to be subjected, any inhabitant of any State, Territory, or District to the deprivation of any rights, privileges, or immunities secured or protected by the Constitution and laws of the United States, or to different punishments, pains, or penalties, on account of such inhabitant being an alien, or by reason of his color, or race, than are prescribed for the punishment of citizens, shall be fined not more than $1,000.00, or imprisoned not more than one year, or both."

This Court reviewed the statute and its history and upheld the statute against an attack based on unconstitutional vagueness in SCREWS v. UNITED STATES, 325 U. S. 91.

For other causes in which statutes have been upheld against such an attack see: BEAUHARNAIS v. ILLINOIS, 343 U. S. 250, COLE v. ARKANSAS, 338 U. S. 345, WILLIAMS v. UNITED STATES, 341 U. S. 97, UNITED STATES v. WURZBACH, 280 U. S. 396.

As a practical matter, an ordinary layman has trouble with any statute no matter how precise its standards of conduct and no matter how clear it may be in the informational process. Statutes really are written for lawyers to read and to form opinions and advise clients thereon, and the statute now under attack when considered with the constructions of the highest appellate Court of the State clearly informs Counsel for Petitioners what the consequences could be.

There must be some latitude in statutory language be-

cause statutes are drafted for the most part in an attempt to take care of unanticipaed situations as well as those that may be in contemplation when the drafting process is first initiated. In NASH v. UNITED STATES, 229 U. S. 378, Mr. Justice Holmes summed up the situation as follows:

> "But, apart from the common law as to the restraint of trade thus taken up by the statute, the law is full of instances where a man's fate depends on his estimating rightly, that is, as the jury subsequently estimates it, some matter of degree. If his judgment is wrong, not only may he incur a fine or a short imprisonment, as here; he may incur the penalty of death.'

This question has also been written about extensively by the law review writers and in closing this portion of the argument we cite a few of these articles but this is not to be construed by the Court as meaning that we approve all the criticisms and conclusions of the authors (109 University of Pennsylvania Law Review - No. 1, November 1960 - p. 67, 62 Harvard Law Review 77, 40 Cornell Law Quarterly 195).

III

THE STATUTE AS ADMINISTERED DOES NOT VIOLATE THE CONSTITUTIONAL PROTECTION OF FREEDOM OF SPEECH.

We assume here that the Petitioners are dealing with the principles of the First Amendment insofar as they may be incorporated in the Fourteenth Amendment. The evidence shows that Petitioners exercised their right of free speech to the fullest extent. Petitioners and their adherents had for days been exercising their right to protest and the right of freedom of speech by writings and slogans on placards which they carried up and down the streets in front of the stores. This was certainly true in the AVENT case and in both cases there is no evidence to show that they had been restrained in any manner in the exercise of this right. The use of the streets and sidewalks of the town and city con-

cerned had been utilized by Petitioners in the AVENT case and there is no reason to believe that any restraints would have been placed upon Petitioners in the exercise of free speech in any proper place. Of course, free speech is not a mighty shield that insulates a person from liability in all types of criminal conduct. Such a logic would extend free speech as a protection from the penalty of murder and would act as a complete and conclusive defense for the commission of all criminal acts. This is explained by a paragraph in KOVACS v. COOPER, 336 U. S. 77, where this Court said:

> "Of course, even the fundamental rights of the Bill of Rights are not absolute. The SAIA case recognized that in this field by stating 'The hours and place of public discussion can be controlled.' It was said decades ago in an opinion of this Court delivered by Mr. Justice Holmes, SCHENCK v. UNITED STATES, 249 U. S. 47, 52, 63 L. Ed 470, 473, 39 S Ct 247, that: 'The most stringent protection of free speech would not protect a man in falsely shouting fire in a theatre and causing a panic. It does not even protect a man from an injunction against uttering words that may have all the effect of force.'
>
> "Hecklers may be expelled from assemblies and religious worship may not be disturbed by those anxious to preach a doctrine of atheism. The right to speak one's mind would often be an empty privilege in a place and at a time beyond the protecting hand of the guardians of public order."

In the case of MILK WAGON DRIVERS UNION v. MEADOWMOOR DAIRIES, 312 U. S. 287, 61 S. Ct. 552, 85 L. ed 836, the Court sustained an injunction against picketing where there was a history of past violence against a plea of freedom of speech and distinguished the case from that of THORNHILL v. ALABAMA, cited by the Petitioners, and said:

> "This is precisely the kind of situation which the Thornhill opinion excluded from its scope. 'We are not now

> concerned with picketing en masse or otherwise conducted which might occasion such imminent and aggravated danger . . . as to justify a statute narrowly drawn to cover the precise situation giving rise to the danger.' 310 U. S. 105, 84 L. Ed. 1104, 60 S. Ct. 736. We would not strike down a statute which authorized the courts of Illinois to prohibit picketing when they should find that violence had given to the picketing a coersive effect whereby it would operate destructively as force and intimidation. Such a situation is presented by this record. It distorts the meaning of things to generalize the terms of an injunction derived from and directed towards violent misconduct as though it were an abstract prohibition of all picketing wholly unrelated to the violence involved."

We shall not burden the Court with further citations from case law but it is sufficient to say that the injuctions sustained by this Court in labor disputes where violence and destruction of property were involved are certainly not constitutionally invalid because those who were engaged in picketing carried banners and mottoes and other writings in the exercise of communications and freedom of speech.

The case of MARSH v. ALABAMA, supra, is no exception to this rule. The defendants in the MARSH case were distributing religious literature and engaged in talking to persons on the streets of a company-owned town. They were not in stores interfering with the businesses of private proprietors. The Supreme Court of the United States simply said that where a company owned the streets and sidewalks the people of the town were compelled to use them in community affairs, that these streets and sidewalks were constitutionally dedicated to the public in the same manner as the streets of a municipal corporation.

IV

CONCLUSION

This Court in these cases is being asked to take a step which has never before been taken with reference to the use and enjoyment of property rights. To grant the request of the Petitioners opens the door to the socialization of all property and would mean that while a proprietor may have the privilege of holding the bare legal title yet the property would be subjected by the State to so many social demands that it would be almost analogous to property held in the corporative state organized and administered for awhile by Mussolini. Petitioners realize that their logic, as derived from their premises, leads to great extremes and they try to hedge against these extremes. For example, must the Petitioners be given entrance to the office of the manager and must they be allowed to go to the stockroom? Suppose the clerks tell Petitioners that they do not have certain articles and the Petitioners think they can find some of the articles in the stockroom, can they go to the stockroom over the protest of the management? Suppose private properietors are compelled to sell to Petitioners, at what price must they sell? If a private properietor sold articles or food to his friends at no cost or at a cheaper rate than usual, would this violate Petitioners' civil rights? Under their own theory, why should not Petitioners be allowed to enter into any private home they desire so long as they say that they are protesting and exercising free speech? The Petitioners' request should not be granted unless the Court thinks we should have a completely socialized state. There should be left to an individual some property rights that he can call his own or else why should we have the institution of private property. We ask the Court not to take such a step and in this connection we again remind the Court of the langauage this Court used in civil rights cases (109 U.S. 3) when it said:

> "When a man has emerged from slavery, and by the aid of beneficient legislation has shaken off the inseparable concomitants of that state, there must be some stage

in the progress of his elevation when he takes the rank of a mere citizen, and ceases to be the special favorite of the laws, and when his rights, as a citizen or a man, are to be protected in the ordinary modes by which other men's rights are protected."

Respectfully submitted,

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